IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6721 OF 2004

Mr.I.R.Kulkarni for the Petitioner.

Mr.R.M.Patne for Respondents Nos. 2 & 3.

Mr.Anilkumar Kulkarni for Respondent No.1.

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Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 17TH AUGUST,2005

P.C.:

1. Rule. Returnable forthwith. Heard finally by consent of parties.

2. By the order impugned in the petition the trial court has rejected the application made by the Defendant for amendment in the written statement. A plea that was raised by amendment in the written statement is that because the subject matter of the suit relates

to an area which is now included within the jurisdiction of Badlapur Municipal Corporation, the decree against Kalyan Municipal Corporation which is the present Petitioner cannot be passed.

3. This application is rejected because the Petitioner had also made

applications earlier in the suit, firstly for dismissal of the suit on the same ground that the area has ceased to be beyond an area of Kalyan Municipal Corporation. That application was rejected on the ground that though presently the area is not included within the jurisdiction of the Kalyan Municipal Corporation, when the cause of action arose the area was part of Kalyan Municipal Corporation. Thereafter the Petitioner moved another application for deleting Kalyan Municipal Corporation as a Defendant. That application was also rejected by the court for the same reason and now an application for amendment in the written

statement is made. That application has been rejected relying on the two earlier orders. In my opinion, the trial court was not justified in rejecting the application for amendment in the written statement on the basis of two orders referred to above. Those orders are interlocutory orders. Because of those orders the court is not prevented from recording a finding on the basis of the evidence led by the parties at the trial that the cause of action of the Plaintiff does not survive against the Kalyan Municipal Corporation. The nature of the applications filed by the Petitioner earlier was for pursuading the court to dismiss the suit summarily without trial. The court rejected those applications. But it is possible that at the trial the court may accept the plea that because the area is no longer within the jurisdiction of Kalyan Municipal Corporation no decree can be passed against the Corporation. Therefore, merely because the court refused to dismiss the suit summarily does not mean that the court should not

permit the Defendant to raise the plea in the written statement so that an issue can be framed. In my opinion, the trial court should have allowed the amendment in the written statement.

4. In the result, therefore, the petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a). No order as to costs.

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